IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1419 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVESHKUMAR DHIRAJLAL THAKKAR - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PRATIK B BAROT for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner – original accused No.3 has prayed for an appropriate writ,

direction and/or order quashing and setting aside the order passed below Exh.18 dated 8.6.2007 passed by the learned Additional Sessions Judge, Mehsana passed in Sessions Case No. 41 of 2007. It is also further prayed to direct the learned Additional Sessions Judge, Mehsana to separate the trial / the case of the petitioner from other absconding accused.

2. The petitioner is charge-sheeted along with other accused for the offence u/s 395, 397 and 364 of the IPC and criminal case being Sessions Case No.41 of 2007 is pending in the Court of learned Additional Sessions Judge, Mehsana in which the petitioner is the original accused No.3. The original accused Nos.2 and 3 are in jail, however, the original accused No.1 was subsequently enlarged on bail and is absconding and is not remaining present in the Court and against him an arrest warrant is also issued. It appears from the record that notice is also issued to the surety. As the petitioner and original accused No.2 both are in jail and at

the same time, the trial is not proceeded further as the original accused No.1 is absconding and is not remaining present during the trial, the petitioner – original accused No.3 submitted an application for separating the trial of Sessions Case No. 41 of 2007 below Exh.18, however, the learned Additional Sessions Judge, Mehsana by its order dated 8.6.2007 dismissed the said application mainly on the ground that the offences alleged against the petitioner and other accused are very serious. Being aggrieved and dissatisfied with the same, the petitioner – original accused No.3 has preferred present petition under Article 227 of the Constitution of India.

3. Shri Barot, learned advocate appearing for the petitioner has vehemently submitted that on one hand, the learned Additional Sessions Judge has observed that as the original accused Nos.2 and 3 are in jail their submissions to proceed further with the trial expeditiously is justified, still the learned trial Court

rejected the application for separating the trial for no fault of the petitioner. It is submitted that if the original accused No.1 is absconding and is not remaining present during the trial, the petitioner should not be made to suffer as on one hand, the trial is not proceeded further and on the other hand the petitioner is in jail and is not released on bail. Under the circumstances, it is requested to direct the learned trial Court to separate the trial so far as the petitioner and original accused No.2 are concerned, who are in jail.

4. Shri M.R.Mengde, learned APP is not in a position to dispute the fact that the petitioner – original accused No.3 and another accused i.e. original accused No.2 are in jail and original accused No.1 is absconding after enlargement on bail and arrest warrant is also issued against the original accused No.1 and the notice is also issued to the surety.

5. It is not in dispute that the trial is not

proceeded further as the original accused No.1 is absconding after enlargement on bail and he is not remaining present during the trial. It is also not in dispute that the petitioner and another accused i.e. original accused No.2 are in jail. Merely because, the original accused No.1 is not remaining present during the trial and is absconding, the petitioner and other accused who are in jail should not suffer and the trial against them is required to be proceeded further even by separating the trial from original accused No.1. Under the circumstances, the trial Court has committed an error in rejecting the application of the petitioner for separating trial from the original accused No.1. Under the circumstances, impugned order is required to be quashed and set aside to that extent.

6. For the reasons stated above, petition succeeds. The order passed by the learned Additional Sessions Judge, Mehsana dated 8.6.2007 passed below Exh.18 in Sessions Case No. 41 of 2007 is

hereby quashed and set aside and the learned Additional Sessions Judge, Mehsana is directed to separate the trial of the original accused Nos.2 and 3 from that of the original accused No.1. In the meantime, Investigating Officer is also directed to take steps to arrest the original accused No.1 and produce him before the learned trial Court. If in the meantime, accused No.1 is arrested, in that case, his case can also be tried along with the petitioner and other co-accused. Rule is made absolute to the aforesaid extent.

(M.R.Shah, J.)

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